P 10

C.F. 71 & 72.

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Department of L. R & Sett

OFFICE Sd. of Rev

STATION madras

H 2007/29

mis **No.** ~~2268~~ 1029.

11.50 9.4.

Dated 5.4.29

		Date	Initial
To whom sent	**Given for copying**		
	Copied KAN		
	Examined RN CPG 9.4.29		
	Signed		
	Given for despatch		
	Despatched		
	Indexed		
Pages in the file	**To be destroyed on***		

(SUBJECT.)

Suit- (S. Kanara)- Karkal- D.no 6- G.S. 7009

Damming a river- Govt. formally impleaded- Orders

under Section- Approved amended

* Not to be filled in in the case of permanent records.

BOARD OF REVENUE
5-APR.1929
LAND REV. & SETTLEMENT

H 2007
(A1181)

Ref. on A3-1002-29.

South Kanara Collector's Office,
Mangalore, 29th March 1929.

48.65.4.29

From

G.W. Wells, Esquire, M.A., I.C.S.,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue and Settlement,
M a d r a s.

Sir,

Suits - (South Kanara District) - Karkal - District Munsif's Court - O.S.700/28.

*****

I enclose a copy of the plaint in the above suit received by me from the District Munsif, Karkal.

2. The suit is for a permanent injunction against defendants 1, 2 and 6 restraining them from interfering with the plaintiff's mamul Katta in poramboke river and taking the water of the Katta to their fields, for closing the new channel opened by the defendants 1 to 9 and running partly through Government land for conveying the water to their fields and for damages and costs. The Secretary of State has been made a supplemental (10th) defendant in the suit. The plaintiff does not claim any decree against Government but wants the plaintiff reliefs against the other defendants in the presence of Government and has added Government as a supplemental (10th) defendant on account of the objections urged by the defendants that Government is a necessary party to the suit.

3. There is hardly any doubt that Government has no direct interest in the result of the suit and that Government is not a necessary party to it. Government can thus have no objection to

abide by the decision of the Court. I consulted the Government Pleader, Mangalore in the matter and he agrees with me in thinking that it is sufficient if a non-committal written statement is filed on behalf of Government and the result of the suit simply watched.

4. If this meets with the Board's approval, I request that the Board may be pleased to accord sanction for filing the enclosed draft written statement on behalf of Government in the suit. The Government Pleader, Mangalore is of opinion that the draft written statement is in order.

5. The notice of suit dated 25.1.1929 was received by me from the District Munsif, Karkal on 27.1.1929. The Government Pleader, Mangalore who was consulted on 29.1.1929 sent his reply on 27.3.1929. The suit stands posted to 15.4.1929.

Your obedient servant,

For Collector.

1.4.29.

In the Court of the District Munsif of Karkal.

O.S.No.700/1928.

Between

Nakre Muddanna Naik — Plaintiff.

and

Jarkal Naganna Hegde and others — Defendants.

Written statement under Order VIII, Rule I of Civil Procedure Code on behalf of the 10th supplemental defendant.

1. The address of this defendant is that of the Collector of South Kanara.

2. This defendant is not a necessary party to the suit.

3. Government are not aware of the exact scope and incidence of the rights of the other parties to this suit and are not concerned in the same. Government are prepared to abide by the decision of the Court.

4. This defendant therefore prays that in adjudicating the matter in dispute between the original parties the costs of this defendant may be ordered to be paid by such of the parties as are deemed liable in the circumstances of the case.

For Collector.

1.4.29.

In the Court of the Karkal District Munsif.

O.S.No.700/1928.

Nakre Muddanna Naika. Plaintiff.

Versus.

Jarkal Naganna Hegde and others. Defendants.

Plaint under Section 26 C.P.C. and O.VII R.1.6.

Dated 3.10.1928.

Plaintiff represents as follows:-

I. Nakre Muddanna Naika, son of Nadibettu Muthaya Hegde, Ryot, residing in Nakre in ------- Kukkundur village, Karkal Taluk.) Plaintiff.

II.(1) Jarkal Naganna Hegde, nephew of --- Chandaya Hegde, Ryot.

(2) Chandu Shetti.
(3) Deju Shetti.
(4) Kanthappa Shetti.
(5) Boggu Shetti.
) Grand nephews of Pijinabettu ---- Govinda Shetti, Cultivators.

(6) Durgi Kadambedi.
(7) Pachu Kadambedi.
) Sisters of Venku Kadamba, Ryots.

(8) Chinnaya Kadamba, brother of Venku Kadamba, ryot.

(9) Tejappa Hegde, son of Padurguttu Dasu Shetti, Ryot.

) Defendants.

1st defendant is residing in Jarkala Aranthabettu in Erlapadi village, Karkal Taluk, 2 to 5 defendants in Padu Basri in Bailur village of the said Taluk, 6 to 8 defendants in Kadambada mane in Bailur village of the said Taluk, 9th defendan in Padur village of Udipi Taluk. 1st defendant is the manager of the family governed by the Aliyasantana Law, 2nd defendant is the manager of the family of the 2nd to 5th defendants and 6th defendant is the manager of the family of 6th to 8th defendants.

III (a) Plaintiff is in the enjoyment by purchase right of the landed property called Itta Katta alias Vitta Katta appertaining to S.No.4C of Kukkundur village after the Settlement and

portion of muli warg No.1 of Nakre village before Settlement. It has been the mamul from time immemorial for the plaintiff and his predecessors before him to utilise the water of the adjoining river called Nakre denoted as S.No.39 at the Survey for raising 1st rice crop, the suggi crop and also the kolke crop in S.Nos. 40 1 & 5 and for raising the suggi and kolke crops in a portion about ½ acre in S.No.40 by putting up a katta across the river. After the plaintiff purchased this property, he built the said katta which was in disrepair by spending not less than Rs.400/- over it.

(b) Defendants 2 to 5 with the object of utilising without mamul the water of the said katta for their A schedule property colluded with the son of the 6th defendant.who is the manager of the B schedule property belonging to defendants 6 to 8 and with Rukkaya Kadamba, the owner of C schedule property and prevailing on them to help them in this connection got the help of the said Rukkaya Kadamba and opened a new channel in about 1912 and 1913 running also through Government land with the object of conveying the water for the irrigation of their properties schedules A,B,C. As the plaintiff demolished this channel, it was not possible for the defendants to realise their object in view. As the Rukkaya died, the defendants were waiting for an opportunity to take the water of the said katta.

(c) In order to get the help of the mighty 9th defendant husband of the daughter of the 7th defendant, defendants 6 to 8 usufructuarily mortgaged B schedule property to 9th defendant and gave possession of it to him. 1st defendant's branch recently purchased C schedule property belonging to the said Rukkaya Kadamba. Defendants 2 to 5 who are the mulgeni tenants of A schedule property are enjoying B and C schedule properties by obtaining them on chalgeni with the evil intention of taking defendants 1 and 9 to their side and with the object of fulfilling their long thought of plan said above.

(d) All the defendants colluded together and on or about-

the end of November 1927 got a new channel cut by defendants 2 to 5 in the Government land adjoining their A schedule mulgeni property and connected it with the channel taking water to the A, B, C schedule properties and with the channel connected with the plaintiff's katta. As soon as the plaintiff came to know of it, plaintiff wrote to 1st defendant to inform defendants 2 to 5 to close the new channel. 1st defendant at first pacified the plaintiff and then excused himself telling the plaintiff about the 9th defendant and thus evaded the closure of the new channel. As the said new channel is partly in the patta land of defendants 2 to 5, plaintiff could not obstruct the work of the new channel or close it. Defendants 2 to 5 are thus taking the water of katta against mamul and utilising it for their land. Plaintiff has thus been subjected to great loss and hardship on account of unjust and unlawful action of the defendants. Defendants 6 to 8 have still muli right over B schedule property and they encourage and help the other defendants in their evil acts. Hence they have been impleaded.

(e) As it has been the mamul to store the water in the katta soon after the monsoon by closing the sluices and by opening them during the monsoon to allow surplus rain water to flow out and to prevent the katta from being damaged by floods, the taking of water of the katta forcibly against mamul by the defendants ------ diminished the water supply to the plaintiff's fields and thereby his crop suffered and he suffered a loss to the extent of 15 muras of rice in the 1st crop and Rs.100 in the kolke crop which could not be raised. The plaintiff's tenants also suffered on this account and they are in arrears of rent.

(f) The katta is a long standing mamul one and the defendants have no manner of right whatever in it. Plaintiff's ----- ancestors had even been given a deduction of Rs.6/- from the beriz on this account till the Settlement.

(g) As the defendants' action is unjust and unlawful and as plaintiff has suffered considerably thereby plaintiff is ----- obliged to bring this suit.

IV. The cause of action arose on or about the end of November 1927 in Kukkundur and Bailur villages within the jurisdiction of this Court.

V. For purposes of court fee and jurisdiction the value has been fixed at Rs.125/-.

VI. Reliefs claimed -

(a) As plaintiff is the rightful owner of the katta in question and is the sole person by mamul right to utilise the water of the katta for the irrigation of his fields for a permanent injunction restraiing the defendants from ------- interfering with the plaintiff's mamul katta in poramboke river and taking the water of the katta to their fields. Relief valued for court fee at Rs. 10.

(b) for a mandatory decree against the defendants for closing the new channel. Relief valued at Rs. 10.

(c) If defendants fail to close the channel, to direct the defendants to pay to the plaintiff Rs.5/- as charges for closing it. Rs. 5.

(d) to pay Rs.100 to the plaintiff on account of loss so far suffered by him by the action of the defendants. Rs.100.

Costs of this suit with future interest and such other reliefs as the Court may deem fit to give.

A Schedule.

Pattas Nos.184 and 185 of Kukkundur village, Karkal Taluk.

38/15	Wet.	0.39	1- 3- 0
16	Do.	0.04	0- 2- 0
17	Do.	0.32	0-15- 0
14	Do.	0.33	1-10- 0
2	Do.	0.76	3-13- 0
9	Do.	0.83	2- 8- 0

B Schedule.

Karkal Taluk. Bailur village.

88/3	Wet.	2.93	14-11- 0
1	Do.	0.39	1- 3- 0

C Schedule.

Karkal Taluk. Bailur village.

87/1	Wet.	3.50	17- 8- 0

As the defendants pleaded that the Secretary of State for India in Council is a necessary party to this suit, as ordered by the Court in plaintiff's R.I.A. of 1929, the Secretary of State has been impleaded as a supplemental 10th defendant as detailed below.

Description of Supplemental defendant.

10. Secretary of State for India in Council.

Process of this defendant is to be served on the Collector of South Kanara.

January 1929.

(True Copy)

1.4.29.

Date of hearing: 10.4.29

my after issue

Suits – (Sikanara) – Karkal – D.C.B –
O.S 700 of 28 – damming a river –
Govt. formally impleaded – D.W.S –
Approved.
H 2007 Q

Resln: – misc 1020 of 9.4.29

The Board approves the draft written statement submitted by the Collector. Para 3 should however be amended by inserting the following at the end.

6
8.4.29

"provided this paramount power of Govt. to control & distribute the supply in the stream are not contravened or restricted"

To the Collr of South Kanara

18
8.4.29

O.W

P.8 c/f. Govt is only formally added as a defendant in this suit. The suit is

P.6 c/f. about the taking of water of the Kalla fourth against manual by the defendants to their fields.

P.2 c/f. The draft written statement is "non-committal as advised by the local Govt Pleader & may be approved

6
8.4.29